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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,372	02/05/2004	Daniel Mercier	1061142	3038

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EXAMINER

BROWN, DREW J

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/771,372	<b>Applicant(s)</b> MERCIER ET AL.	
	<b>Examiner</b> Drew J. Brown	<b>Art Unit</b> 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 6/22/06 (amendment).
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 4 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This Office Action is in response to the amendment filed on 6/22/06. Claims 1, 9, and 14 have been amended.

#### ***Claim Objections***

1. Claim 4 is objected to because of the following informalities: The phrase "spring shaped metallic member" should be changed to --metallic spring member--. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 9, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kondo et al. (U.S. Pat. No. 4,662,471).

With respect to claim 1, Kondo et al. discloses a frame (12), an engine (36, transmission 39) resiliently attached to the frame, generating power, a power output member (41) operatively connected to the engine, at least one front wheel (18) attached to the frame, at least one rear wheel (22) attached to the frame, a handle bar (21) operatively connected to the frame, permitting steering of at least one of the front and rear wheels, a straddle seat (32) supported by the frame, a power transmitting device (47) operatively connected between the power output member and at least one of the front and rear wheels to transmit the power thereto from the engine (Figure 2), and a link (45) operatively coupled between the power output member and the power transmitting device, the link transmitting the power from the power output member to the power transmitting device (column 3, lines 21-28) such that at least one of angular or axial misalignment between the power output member and the power transmitting device is tolerated (Figure 2, Figure 4).

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With respect to claim 9, the link acts as a means for accommodating non-rotational movement of the power transmitting device with respect to the output member and for transmitting rotational movement from the output member to the power transmitting device (column 3, lines 21-28).

With respect to claims 12 and 13, a drive member (46) is disposed on the frame, operatively connecting the power output member to the power transmitting device, wherein the drive member resists translational movement relative to the frame (Figure 2).

With respect to claim 13, a swing arm (56) is pivotally connected to the frame supporting at least one of the front and rear wheels, wherein the drive member resists translational movement with respect to the swing arm (Figure 2).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 5, 7, 8, 10, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et al. in view of Onishi et al. (U.S. Pat. No. 4,465,157).

With respect to claims 2, 10, and 14, Kondo et al. discloses the claimed invention as discussed above but does not disclose that the engine is resiliently attached to the frame by rubber mounts, which reduce vibrational transfer between the engine and the frame and allow relative movement of the engine with respect to the frame.

Onishi et al., however, does disclose that the engine is resiliently attached to the frame by rubber mounts (Abstract), which reduce vibrational transfer between the engine and the frame and allow relative movement of the engine with respect to the frame.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Kondo et al. in view of the teachings of Onishi et al. to resiliently mount the engine to the frame using rubber mounts to absorb the

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vibrations of the engine and to limit the rearward movement of the engine body to an allowable range when the engine is suddenly started (column 1, lines 54-57).

With respect to claims 3 and 11, Kondo et al. discloses that the power transmitting device is selected from a group comprising a belt, a chain, and a drive shaft (47).

With respect to claim 5, Kondo et al discloses a drive member (bevel gear assembly 46) that is disposed on the frame, operatively connecting the link to the power transmitting device, wherein the drive member resists translational movement relative to the frame (Figure 2).

With respect to claim 7, Kondo et al. discloses a swing arm (56) pivotally connected to the frame, wherein the swing arm supports at least one of the front and rear wheels.

With respect to claim 8, the drive member (46) is disposed on the swing arm (Figure 2), operatively connecting the link to the power transmitting device, wherein the drive member resists translational movement relative to the swing arm (Figure 2).

#### ***Allowable Subject Matter***

6. Claims 4 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Examiner notes that claim for is also objected to because of minor informalities.

#### ***Response to Arguments***

7. Applicant's arguments filed on 6/22/06 have been fully considered but they are not persuasive.

On pages 11, 12, and 15-17 Applicant argues that Kondo does not teach a link transmitting power from a power output member to a power transmitting device such that variation in at least one of angular or axial misalignment between the power output member and the power transmitting device during operation of the vehicle is tolerated. The Examiner maintains that the rejection is proper because the swing arm (56) does tolerate angular misalignment between the power output member and the power transmitting device during operation of the vehicle by swinging up and down when traversing rough terrain. Also, the link (45) tolerates an angular and axial misalignment at least to a some degree; when the vehicle

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traverses rough terrain, the drive system will still operate effectively even while experiencing mechanical shocks.

Applicant also argues that Onishi does not remedy the deficiency that the variations are tolerated. However, as discussed above, Onishi is not relied up to teach that the variations are tolerated; instead, Kondo is relied upon.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew J. Brown whose telephone number is 571-272-1362. The examiner can normally be reached on Monday-Thursday from 8 a.m. to 4 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Drew J. Brown  
Examiner  
Art Unit 3616

db  
8/28/06

  
PAUL N. DICKSON 8/30/06  
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